

1979 WL 42772 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 23, 1979

*1 Glen S. Baldwin, Esquire
City Attorney
City of Greenville
P. O. Box 2207
Greenville, SC 29607

Dear Mr. Baldwin:

I am in receipt of your recent letter. You have stated that a city councilman desires to resign his council seat effective May 14, 1979. The city election will be held on May 15, 1979. You have asked if the council can accept the resignation and declare the seat vacant in order that that seat can be voted on at the general election to be held on May 15, 1979.

There would be no prohibition in a person tendering a prospective resignation. 63 Am.Jur.2d Public Officers and Employees, § 165 states that ‘ . . . a resignation to take effect on a certain day operated in the first moment of that date . . . ’ See also Sections 136 and 163; 29 C.J.S. Elections, § 86(2)

An election cannot be called until after a vacancy exists. 29 C.J.S. Elections, § 70. Therefore, the actual election cannot be set for a date prior to the actual date that the resignation would be effective. However, if the municipality conducts partisan elections, this would apparently not prohibit the political parties from conducting primaries or conventions for candidates prior to the date set for the elections. 1964-65 Att'y. Gen. Ops., 20, Opinion No. 1787; 1969-70 Att'y. Gen. Ops., 332, Opinion No. 3032.

Very truly yours,

Treva G. Ashworth
Senior Assistant Attorney General

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